
(2018) 08 DEL CK 0399

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 34885, 34886 Of 2018 In Letter Petent Appeal No 443 Of 2018

University Of Delhi & Ors

APPELLANT

Vs

Adarsh Raj Singh & Anr

RESPONDENT

Date of Decision : 28-08-2018

Acts Referred:

Citation : (2018) 08 DEL CK 0399

Hon'ble Judges : RAJENDRA MENON, CJ;V. KAMESWAR RAO, J

Bench : Division Bench

Final Decision : Diposed Off

Judgement

RAJENDER MENON, CJ

CM APPL. 34886/2018 (for Impleadment)

1. This application has been filed by 15 applicants who claim to be students enrolled in the three academic sessions for LL.B. Course as are indicated

in Para 1 of the application. They are aggrieved by the act of the University in not permitting them to take up further examination, on account of

shortage of attendance, thereby, detaining them and putting their name in the list of detained candidates.

2. It is the case of the applicants that the writ Court in the matter which is the subject matter of consideration in this appeal has allowed the writ

petition and has directed that the students be directed to take 139 hours of classes and thereafter their examination be undertaken. It is pointed out that

the aforesaid order passed by the writ Court is the subject matter of consideration in this appeal and by a detailed order passed by us on 24.08.2018 on

an undertaking given by the University, this Court has allowed the University to declare the results of certain candidates who are petitioners before this Court and have confined the relief only to the petitioners in the said case and not to any other student. By taking us through the detailed judgment rendered by the learned writ Court which was impugned in the present appeal and referring to the directions contained therein i.e. in Para 45, it is argued that the judgment is a decision in rem applicable to all the students who are identically situated and depriving the applicants of the said benefit and making the order passed by this Court giving directions to the University on 24.08.2018 requires to be modified, the applicants should also be granted similar benefit.

3. Inviting our attention to a judgment of the Supreme Court in the case of State of Uttar Pradesh & Ors. v. Arvind Kumar Srivastava & Ors. (2015)

1 SCC 347, it was vehemently argued that when an order or a judgment is one in rem all similarly situated persons irrespective of the fact that they

approached the Court or not are entitled to similar benefit. It is argued that once the writ Court in the original writ petition had quashed the detention

list then all persons whose names are contained in the said list are entitled to the benefit given by order passed by us on 24.08.2018 and the University

cannot deny the said benefit to the present applicants, nor can by order of this Court it be restricted only to persons who approached the Court.

4. We have considered the submissions made and we have also taken note of various facts that have been brought on record including the law laid down in the case of Arvind Kumar Srivastava (supra).

5. The LPA in question was filed by the University and during the course of hearing of the matter by us on 21.08.2018 it was brought to our notice

that the directions issued in the writ petition from Para 45 onwards cannot be implemented as its implementation would result in derailing the entire

calendar for the current academic session and even admission to the course in question for the current academic session would be adversely affected.

However, taking note of various factors and the fact that by an interim order students were directed to take up the examination, we requested the

University to explore the possibility of declaring the results of the students and it was on the basis of the undertaking given by the University that we

had passed the order in the LPA on 24.08.2018 and Paras 3 and 4 of the

directions issued by us read as under:

3. Keeping in view the facts and circumstances of the case, we are of the considered view that, for the present, with regard to the petitioners who

are before us the undertaking given by the University meets the ends of justice and therefore we dispose of these appeals in the following manner:

(1) As undertaken by the University, all such petitioners who have appeared in the examination in question by virtue of the interim order passed by the

writ Court, their results shall be declared by the University forthwith within a period of 3 days from today in accordance with the Rules.

(2) Such of the petitioners who have passed in the said examination would be permitted to prosecute their studies further in accordance with the Rules

and such of them who fail in the examination would be given one more opportunity to appear in the forthcoming supplementary examination and

thereafter their results would be declared and they would be permitted to prosecute their studies in accordance with the Rules.

4. As far as the interpretation of Rules 10 and 18 of the Bar Council Rules and various other legal principles canvassed in these appeals are

concerned, we would consider them in LPA No.443/2018 and after hearing all concerned, the legal issues raised by the University would be

considered and a decision taken. For the said purpose, LPA No.443/2018 shall be kept pending.

6. Thereafter, in Para 5 we had clarified that the order shall not be treated as a precedent and it would only be applicable to persons who have

approached this Court and in whose cases the proceedings are pending. We were constrained to pass the aforesaid order taking note of the difficulties

expressed by the University in taking 139 hours of classes and the fact that all the petitioners who are parties before us had approached this Court

well in time when the detention list was published and just before the examinations were to be held sometime in the month of March/April, 2018. We

also took note of the fact that by virtue of the interim order passed by the Court in the pending writ petitions which were allowed, all the students were

permitted to take up the examination and therefore it is only in the case of students who approached the Court in time and by an interim order who

were permitted to take the examination we passed the order and while passing the order we were conscious of the fact that there may be some other

students who may be similarly situated but we did not make the order applicable to them on account of the fact that - (1) they were fence sitters who did not approach the Court in time; and (2) they had not appeared in the main examination which was held and which was undertaken by the petitioners which were before this Court by virtue of the interim orders and, therefore, such of the persons who were not benefited by the interim orders were kept away from the purview of the benefit available under the orders passed by us on 24.08.2018.

7. Now, the applicants want that in their case also similar benefit should be granted and they should be permitted to take up the supplementary examination and thereafter their result declared. The applicants having not approached this Court before the main examination cannot be permitted to appear in the supplementary examination without taking the main examination and, therefore, we see no reason to make any indulgence into the matter now at the instance of the present applicants. The judgment in the case of Arvind Kumar Srivastava (*supra*) relied upon will not apply in the facts and circumstances of the present case. The said judgment was with regard to benefit granted to employees pertaining to the service conditions or appointment to a service where the factors to be considered are entirely different. In this case, the applicants having not taken the main examination cannot be granted liberty to take up the supplementary examination which is an examination conducted for certain candidates who had appeared in the main examination but failed to pass the same or there are circumstances as per Rule which entitled them to take up the supplementary examination. In the case of the petitioners, the applicants kept quite over the matter, did not challenge the detention list and now want this Court to say that either they should be permitted to take up the supplementary examination or their right to attend 139 hours of classes should be restored as the order passed by the writ Court to that effect i.e. taking up 139 hours of classes is being taken away by the orders passed by this Court.

8. In our considered view, the petitioners cannot make any such prayer having kept quite over the matter right from March, 2018 till the decision of the matter and even during the pendency of the LPA before this Court. It seems that the applicants as fence sitters were watching the proceedings and immediately when the benefit was granted to the petitioners before this Court the applicants have moved an interlocutory application.

9. In our considered view, in the facts and circumstances of the case, primarily on considering the fact that the applicants had not taken up the main examination by virtue of the interim order passed by the writ Court as was done in the case of the original petitioners who approached this Court in time, we cannot make any indulgence into the matter.

CM APPL. 34886/2018 is therefore dismissed.

CM APPL.34885/2018 (for review/modification of order dated 24.08.2018) In view of the order passed in CM APPL. 34886/2018, no orders are called for on this application.

The same stands disposed of.

Order dasti.